Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling that	)	WC Docket No. 03-45
pulver.com's Free World Dialup is Neither	)	
Telecommunications nor a	)	
Telecommunications Service	)	
	)	

COMMENTS OF
THE INTERNATIONAL SOFTSWITCH CONSORTIUM

I. Introduction

The International Softswitch Consortium ("ISC"), by and through its attorneys, and pursuant to 47 C.F.R. §§ 1.415(c), 1.419 and DA 03-439 (released February 14, 2003), respectfully submits these Comments on pulver.com's petition for a declaratory ruling (the "Petition") that its Free World Dialup ("FWD") system is neither "telecommunications" nor a "telecommunications service" for purposes of Title II of the Communications Act.

ISC is a rapidly growing, not-for-profit organization working to advance worldwide adoption of next-generation multimedia communications via networks based on packet technologies. ISC develops open standards, interoperability, and architectures for Internet-based, real-time multimedia and voice applications. Many applications emulate circuit switching in software, hence the name, "Softswitch."
ISC's member companies, including many of the world's leading communications service providers, equipment vendors and software developers, are at the forefront of a

technological and market revolution in the communications service industry.[1] Internal working groups of ISC members identify standards, requirements, and solution strategies for the global communications industry. For example, together with law enforcement and the Commission, the ISC Legal Intercept Working Group currently is attempting to develop a safe harbor specification for compliance with the Communications Assistance For Law Enforcement Act.[2]

II. If the Commission Acts on the Petition, the pulver.com Service Should Not Be Classified as "Telecommunications" or a "Telecommunications Service."

The Petition presents an extremely narrow issue of whether a Session Initiation Protocol ("SIP")-based peer-to-peer service in which special CPE purchased by both parties to the call must be used in order for the service to function meets the definition of "telecommunications" or could be construed as a "telecommunications service" for purposes of Title II of the Communications Act and its attendant obligations.[3] According to the Petition, the service does not facilitate access to the public switched telephone network, nor does it require payment of a fee.[4] pulver.com maintains that a declaratory ruling is needed to address inquiries from international regulators about the regulatory status of the service.[5]

For reasons discussed further below, ISC believes that, rather than reviewing the pulver.com Petition as a stand-alone matter, the Commission should consider the request within other proceedings addressing the broader goal of reforming and rationalizing all

---

[1] *See* http://www.softswitch.org/memberlist/member_list.asp.

[2] *See* ISC *ex parte* filings in CC Docket No. 97-213, filed May 24, 2001 and August 6, 2001.

[3] Petition at 3-4.

[4] *Id.* at 4.

[5] *Id.* at 1.

intercarrier compensation.[6] However, to the extent the Commission does rule on the Petition in the instant proceeding, it should find the service is not "telecommunications" and that pulver.com does not offer a "telecommunications service."

These conclusions are inescapable, given the functionality of the service. As discussed in the Petition, pulver.com does not contain a transmission element; members of the service must separately purchase their own access to broadband transmission facilities.[7] Because the VoIP communications between members of the service are not "telecommunications," and because no fee is charged by the service provider, the FWD service may not properly be classified as a "telecommunications service." ISC agrees that the FWD service much more closely resembles an Internet application, which the Commission has consistently considered to be outside the scope of telecommunications, than it does to any "telecommunications service." Indeed, it would be nonsensical to apply Title II obligations, such as nondiscrimination, to pulver.com, which offers no transmission capacity. Accordingly, to the extent the Commission makes any ruling at all on the Petition, it should find that pulver.com's service is not "telecommunications" or a "telecommunications service."

III. Concern Over VoIP's Regulatory Status Should Not Obscure Larger Commission Initiatives, such as the Need for Expeditious Resolution of Intercarrier Compensation Reform.

More importantly, the Petition underscores how convergence and developing technologies will increasingly drive the need for the Commission to resolve issues in a

---

[6] *See, e.g., Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking (rel. Apr. 27, 2001). The drastic need for such reform was perhaps best captured in the Separate Statement of Commissioner Ness, who noted that the same network function can result in multiple prices – and even differing directions of payment – depending upon whether the call is deemed local, long distance, Internet-bound, CMRS or paging in nature.

[7] *Id.* at 4.

comprehensive manner. For instance, much attention and comment has been focused on whether VoIP services are "telecommunications" because of concern over whether carriage of such traffic is subject to access charges. In this respect, the Petition echoes issues raised in AT&T's pending request for a declaratory ruling that its phone-to-phone VoIP service is an "enhanced service" exempt from access charges.[8] The imposition of access charges for termination and origination of phone-to-phone VoIP traffic is peripheral to the Commission's efforts to reform the intercarrier compensation regime, given that VoIP traffic represents less than 3% of all interexchange traffic. VoIP services, which are still in their infancy, have a marginal effect on any perceived inequities in intercarrier compensation. Accordingly, despite the substantial interest in the AT&T Petition and the appropriate classification of VoIP services, the Commission should not lose sight of the need to address intercarrier compensation in a comprehensive manner – in fact, the VoIP debate should be viewed as a catalyst that prompts intercarrier compensation reform for *all* services. The Commission should not allow *ad hoc* responses to declaratory ruling petitions on the regulatory classifications of various forms of VoIP services to drive a larger issue such as access charge reform, in which VoIP traffic plays a very small part.

Further, the *ad hoc* approach, under which the Commission is asked to make determinations on specific instances of VoIP services, such as requested in the Petition and in the AT&T Petition, is based on arbitrary distinctions. As the Commission itself seemed to recognize in first discussing this issue in 1998, given the myriad permutations of VoIP services, including phone-to-phone, computer-to-computer, and computer-to-

[8] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket No. 03-61 (filed October 18, 2002) (the "AT&T Petition").

phone, any attempt to delineate functional and regulatory distinctions among the range of VoIP services will be artificial, quickly outdated and arbitrary.[9]

IV. The Commission Should Avoid Any Conclusion in Responding to the Petition that Could Burden VoIP Services Through Legacy Regulation.

If the Commission does make a substantive determination on the Petition, it should be mindful of the need to retain its deregulatory approach toward VoIP services. As ISC has pointed out in other proceedings, leaving VoIP services unregulated is most consistent with the Commission's and Congress's deregulatory approach toward VoIP.[10] Indeed, the Commission's *Report to Congress* included discussion of the proper regulatory classification of various VoIP services and adopted certain tentative conclusions, but deferred a decision until a more complete record could be developed.[11] There, the Commission emphasized that the need for a more fully developed record was particularly acute with respect to emerging services.[12] This cautious, deliberate and deregulatory approach to emerging technologies has been articulated by Commissioner Abernathy as an approach in which "regulators [] exercise restraint when faced with new technologies and services."[13] If it rules on the Petition, the Commission should not adopt conclusions or apply classifications to VoIP services generally that could lead to the imposition of access charges or other Title II regulations to VoIP traffic.

---

[9] *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501, ¶ 90 (1998) ("*Report to Congress*"). It is also worth noting that, even if the Commission wants to apply the "phone-to-phone" and other standards discussed in the *Report to Congress*, the FWD service appears to fit squarely within the category of "computer-to-computer" applications that cannot be considered by even the most strained reasoning to fall within the definition of "telecommunications." *See id.* at ¶ 87.

[10] Comments of ISC in CG Docket No. 02-278 and CC Docket No. 92-90 (filed January 31, 2003), at 4-5.

[11] *Report to Congress* at ¶ 91.

[12] *Id.*

[13] *See, e.g.,* Remarks of Commissioner Kathleen Q. Abernathy Before the Federal Communications Bar Association New York Chapter, New York, NY July 11, 2002 (articulating a "nascent services doctrine" toward the regulation of new technologies and platforms).

III. Conclusion

WHEREFORE, ISC requests that if the Commission acts on the Petition, it grant it, but that consideration of the Petition and other *ad hoc* requests for determination of the regulatory classification of VoIP services should not lead to the imposition of Title II regulations on a new technology and should not obscure the need to address intercarrier compensation in a comprehensive manner.

Respectfully submitted,

INTERNATIONAL SOFTSWITCH CONSORTIUM

//ss// Michael Khalilian
Michael Khalilian
Chairman and President
International Softswitch Consortium
m.khalilian@attbi.com
303/683-7916

Staci L. Pies
Chairperson, Government Liaison Working Group
International Softswitch Consortium
Staci.Pies@Level3.com
571/382-7443

Mark J. Tauber
Paul W. Jamieson
Piper Rudnick LLP
1200 19th Street N.W.
Washington, DC 20036
202/861-3900

Dennis J. Gallitano
Piper Rudnick
203 N. LaSalle Street
Chicago, IL 60601
312/368-4000

Its Attorneys

March 14, 2003